

November 2004

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.11 Dissemination of Sexually Explicit Matter to Minors

Insert the following note on page 144 after the January 2004 update:

Note: In *Athenaco, Ltd v Cox*, ___ F Supp 2d ___, ___ (ED Mich, 2004), the Court upheld the January 1, 2004 amendments to MCL 722.671 et seq. The plaintiffs in that case challenged the constitutionality of the amendments. The Court held that the “Act, 2003 Mich. Public Act 192, M.C.L. §§ 722.671 (a), (b) and (e), 722.675 and 722.677 . . . is neither vague nor overbroad. As such, Defendants are entitled to summary judgment on the Act’s constitutional validity.”

CHAPTER 7

General Evidence

7.3 Evidence of Other Crimes, Wrongs, or Acts

C. Admissibility of “Other-Acts” Evidence in Cases Involving Sexual Assault

Insert the following case summary on page 338 before the summary of *People v Ortiz*:

♦ *People v Drohan*, ___ Mich App ___ (2004):

The defendant was convicted of CSC III and CSC IV against a former coworker. At trial, the victim testified that the defendant rubbed the victim’s breast and grabbed her wrist and made her touch his crotch on several occasions. She also testified that he forced her into the passenger seat of a car and forced her to perform oral sex on him. The defendant argued that it was consensual sexual contact. At trial, another witness testified that on a previous occasion the defendant had grabbed her breast and grabbed her arm and tried to get her to touch his exposed penis. A third witness testified that she went to a party at the defendant’s house. She indicated that she was sleeping in the children’s room and when she woke up the defendant’s “hands were on [her] buttocks and he was playing with himself.” The trial court admitted the testimony regarding the defendant’s former acts because it was “relevant to show the existence of a scheme, plan, or method by which the defendant accomplished the sexual assault in that consent is an issue, therefore, showing a scheme, plan, or method by which he non-consentually [sic] engages in sexual assault with women is relevant to this trial.” On appeal, the defendant argued that the trial court erred in admitting this testimony. The Court of Appeals held that the evidence was introduced for a proper purpose because each of the incidents had “common features” that allowed the inference “that defendant had a common scheme of suddenly grabbing unwilling women and seeking immediate sexual gratification from them.” The Court also found that the evidence was relevant, and the danger of unfair prejudice did not substantially outweigh the probative value of the evidence.

CHAPTER 7

General Evidence

7.6 Former Testimony of Unavailable Witness

On page 364, after the April 2004 update, insert the following text:

Crawford v Washington, 541 US ____ (2004), applies retrospectively to cases pending on appeal when *Crawford* was decided. *People v Bell*, ____ Mich App ____, ____ (2004).